

November 2004

## New Guidance on Using Voluntary and Emerging Measures to Meet Air Standards Should Help Industry

States are required to adopt and implement State Implementation Plans (“SIPs”) designed to attain and maintain the national ambient air quality standards (“NAAQSs”). The emissions control measures that SIPs have traditionally imposed on industrial sources, however, have not always resulted in attainment of the NAAQSs in all areas. With the recent tightening of the NAAQSs for ozone and particulate matter, attaining them will become even more difficult. As a result, States have looked to voluntary and emerging measures in addition to traditional emission control strategies to include as part of their SIPs.

The EPA is now encouraging States to consider voluntary and emerging measures. In September 2004, the EPA released a guidance entitled, “Incorporating Emerging and Voluntary Measures in a State Implementation Plan (SIP).” The purpose of the Guidance is to provide procedures states can use in developing SIPs using emerging and voluntary measures, as well as to provide a listing of examples of such emerging and voluntary measures. (To view a copy of this Guidance, [click here](#).)

The Guidance does not replace existing requirements for SIPs. The Clean Air Act and the EPA’s regulations at 40 C.F.R. Part 51 contain legally binding requirements for SIPs. To be included in a SIP, emissions reductions must be surplus (not used for other purposes), enforceable, quantifiable, permanent, and anti-backsliding (not less restrictive than prior SIP requirements). These basic requirements apply whether the SIP provisions are for attainment, reasonable further progress (“RFP”), rate of progress (“ROP”), general conformity, or maintenance. The Guidance explains, “This policy addresses emission reduction strategies that do not meet the enforceability or quantification requirements in the standard way.”

The Guidance defines an “emerging measure” as “a measure or strategy that does not have the same high level of certainty as traditional measures for quantification pur-

poses.” The Guidance provides several examples of emerging measures under development. One example is activities that promote more efficient production or use of energy or that promote renewable resources, including solar or wind power, combined heat and power generation, and education or incentive programs to reduce consumer energy use. Another example is an activity that improves air quality by means other than emissions reductions, such as heat island measures that reduce criteria pollutant concentrations by lowering ambient temperatures. Another example is a tree protection or planting program that reduces pollution in the ambient air.

In order to use such emerging measures, States need to quantify pollution reductions based on the best knowledge currently available. The State must commit to complete an initial evaluation of such emerging measures not later than 18 months after putting the measures in place and periodically thereafter. If post-implementation evaluations do not support the projected emission reductions from the emerging measure, then the State must reconcile the difference between the projected and the actual emissions reductions.

The Guidance defines a “voluntary measure” as “a measure or strategy that is not enforceable against an individual source.” The Guidance also provides some examples of stationary source voluntary measures. Some examples include limiting the sale or use of high emitting paints or other consumer products on ozone action days, deferring or reducing certain maintenance activities, making process changes or improving operating practices, implementing wood stove change out programs, and educating consumers or sources about the effects of their actions on the environment.

Although voluntary measures are not enforceable against an individual source, the State must make an enforceable commitment to monitor, assess and report on emission reductions resulting from the voluntary measures and to

remedy shortfalls from forecasting emission reductions. The method used to evaluate the effectiveness of a voluntary measure will depend on what voluntary measure is used. The States are required to complete an initial evaluation of the effectiveness of each measure no later than 18 months after putting the measure in place and periodically thereafter.

Many reasons exist why individual sources should agree to undertake voluntary measures. The Guidance explains:

Even though an individual source would not receive direct benefit from participating in a voluntary measures program, there are incentives for sources to participate. These include a desire on the source's part to contribute to improved air quality, possible recognition by the State or others of the source's contribution to air quality improvement, and the opportunity to participate in a non-regulatory program for a small group of sources that may achieve emission reductions in a more cost-effective and less resource-intensive manner.

The Partners for Clean Air, a coalition of Illinois groups committed to improving air quality through voluntary actions, already includes a number of corporate members, such as Abbott Laboratories, BP, and Commonwealth Edison.

State SIPs will not likely be overrun with new provisions relating to voluntary and/or emerging measures. The EPA has placed a presumptive limit of 6% of the total amount of emissions reductions required. The 6% reduction does not apply to an area's total emissions inventory, but only to the increment that is necessary to achieve ROP, RFP, attainment or maintenance. The EPA may approve measures into a SIP in excess of the presumptive 6% limit where a clear and convincing justification is provided by the State. In addition, voluntary and emerging measures cannot be used by a source to meet any other emission reduction requirements, such as application of Best Available Control Technology ("BACT") or Lowest Achievable Emission Rate ("LAER") when new source review requirements are triggered.

Manufacturing sources should encourage States to include voluntary and emerging measures in their SIPs. Such measures not only help States to attain and maintain NAAQSs, they help States to focus on non-traditional sources of air pollution. Moving away from the command-and-control strategies that traditionally target manufacturers is a good thing.

*Readers are welcome to contact any member of Seyfarth Shaw's Environmental Safety and Toxic Tort Practice Group with questions relating to this new legislation or other areas of concern.*

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